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NO. 80-1080

IN THE

SUPREME COURT OF THE UNITED STATES

1980 TERM

VERNA BIBLE, ROBERT STEVEN MEZIERE AND BILLY W. MOORE,
Petitioners,

Versus

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

RESPONSE OPPOSING PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The State of Louisiana feels compelled to amplify and correct the Statement of the Case as set forth in defendants' brief.

Prior to the search of the vehicle in question, State Trooper Danny Warner had received information from a reliable confidential informant that a blue and white Monte Carlo would be arriving at the J'Cal Motel and Trailer Park in Rayville during the early morning hours of the next day. The informant further told Trooper Warner that defendant Billy Moore would be in the car and would be delivering marijuana to a person named Lingefelt. Surveillance was established at the motel, and shortly after midnight (the early morning hours of March 2, 1979), the vehicle arrived and backed up to the trailer occupied by Lingefelt. Moore exited the car, opened the trunk of the vehicle and took a suitcase and a brown paper sack

into Lingefelt's trailer. It should also be added that defendant Moore was known to surveilling officers as a drug peddler, as one of the officers had purchased marijuana from Moore previously.

Approximately fifteen minutes later, defendant Moore and defendant Meziere exited the trailer, replaced the suitcase in the trunk of the vehicle and left the motel premises. Shortly thereafter, Lingefelt left the trailer carrying what appeared to be the same brown paper sack which defendant Moore had previously brought to the trailer. The officers then proceeded to a road block less than one mile east of the motel where other officers had stopped the defendants' vehicle and also the Lingefelt vehicle.

Trooper Warner, who was in charge of the investigation, stopped the Lingefelt subject, seized the brown paper sack on the front seat of the vehicle and determined the contents thereof to be marijuana. Trooper Warner instructed the other officers

to stop defendants' vehicle, but not to search the vehicle, pending his arrival. The officers who stopped defendants did not place them under arrest, but did order defendants out of the vehicle. The males (defendants Moore and Meziere) were frisked by officers, but the officers did not search the vehicle prior to Trooper Warner's arrival. Warner arrived, minutes after stopping the Lingefelt vehicle, and told defendants that he intended to search their car. He obtained the keys from one of the defendants and opened the trunk of the car. The suitcase was unlocked, and Trooper Warner opened it on the spot, finding the only contents to be approximately four pounds of marijuana.

The entirety of the surveillance of defendants, the stop, and the search of defendants' vehicle consumed only a matter of a few minutes. It should be finally noted that the defendants were not actually arrested until the search was completed.

SUMMARY OF ARGUMENT

The search of defendants' suitcase was permissible because the police officers had probable cause to search the defendants' vehicle which contained the suitcase. The probable cause was focused on the vehicle itself, since the officers had (1) received an informant's tip that marijuana was being carried in the vehicle and (2) the tip had been confirmed when the officers saw the vehicle used in an apparent drug "drop." Hence under Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925) and Chambers vs. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970), the vehicle and contents could be searched.

The search in this case is not rendered invalid under United States vs. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977) or under Arkansas vs. Sanders, ____ U.S. _____, 99 S.Ct. 2586 (1979). Each of these cases hold that a search warrant is required if a piece of luggage is the focal point of probable cause to search, and the luggage has been

seized and is in the possession of law enforcement officers. In these cases, the automobile bore no relation to the probable cause, and, in fact, there existed no probable cause in these cases to search the automobiles involved.

In the instant case, the focal point of the search was the automobile itself, not the luggage. Hence, the police officers could properly look into the unlocked suitcase during the course of searching the vehicle for contraband.

ARGUMENT

MAY IT PLEASE THE COURT:

The State of Louisiana opposes the petition for Writ of Certiorari, for the reason that the state court judgment in question does not conflict with the present jurisprudence concerning automobile searches.

This court has held in Carroll vs. United States, 267 U.S. 132, 45 S.Ct. 280 (1925) and Chambers vs. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970) that due to exigent circumstances, officers acting with probable cause may stop and search moving vehicles without a search warrant. In the instant case, there was probable cause to stop the vehicle operated by defendants. Defendants were dispensing drugs from the vehicle, and, in fact, had been seen by officers making a "drop" only minutes before the vehicle was stopped. Since there was no time to obtain a warrant before the vehicle got out of sight and the contraband disposed of, the vehicle was stopped and searched quite in line with

the Carroll and Chambers doctrines.

In this case, however, defendants embrace the doctrines espoused in United States vs. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977) and Arkansas vs. Sanders, ____ U.S. _____, 99 S.Ct. 2586 (1979), which defendants cite as authority for prohibiting the search of the suitcase which was removed by Trooper Warner from the trunk of defendants' vehicle. Chadwick and Sanders were cases involving searches of a footlocker in the former case and a green suitcase in the latter instance. In both instances, the police were on the lookout for the piece of luggage itself, so the focal point of the probable cause was directed at the particular piece of luggage involved. In Chadwick, the police had arrested defendants, and had actually taken the footlocker from the trunk of an automobile, then to the Federal Building in Boston, and did not open the footlocker until one and one-half hours following the seizure. The court found that the search was conducted

"long after respondents were securely in custody" and that the search "therefore cannot be viewed as incidental to the arrest or as justified by any other exigency." Chadwick supra, at pages 2485, 2486. In Sanders, the green suitcase was retrieved from a taxi cab by the police and opened on the spot. The court found, at page 2593 of the opinion, that the police had "seized a suitcase" which was then in police control and thus immobile. The Court felt that under these non-exigent circumstances, the search did not fall under the automobile exception created under the Carroll and Chambers tests. In the concurring decision in Sanders, Mr. Chief Justice Burger felt that the case did not present a question of whether a warrant is required before opening luggage when the police have probable cause to believe that contraband is located somewhere in the vehicle but they do not know exactly where. Sanders, supra, at page 2595.

In the case under consideration, the

officers had, from the informant's tips, probable cause to believe that marijuana was being carried in a blue and white Monte Carlo. Nothing was said in the tip about a suitcase. The officers, being familiar with the Carroll and Chambers doctrines, certainly felt that they could legitimately search the vehicle, which was a moving instrument of crime, as had very obviously been observed during the drug "drop" only minutes before stopping the vehicle. It is submitted that Chadwick, supra, did not change the rationale of Carroll, supra, and Chambers, supra, as Chadwick did not deal with the search of a vehicle as to which officers had probable cause to believe contained contraband, but dealt with, instead, the search of a foot-locker in the repose of the Federal Building in Boston, a lengthy time after the seizure took place. It is further submitted that Sanders, supra, did not undermine the Carroll and Chambers cases, as the focal point of the investigation and search was the suitcase,

and not the automobile. As was pointed out by Louisiana Supreme Court Justice Lemmon, writing for the majority in our decision:

> "The only place in the vehicle that the officers in the Sanders case had probable cause to believe that marijuana might be found was in the defendant's green suitcase, and, indeed, the officers arguably did not have probable cause to seize the taxi cab and take it to the station. Here, the officers had probable cause to search the entire vehicle, and although the suitcase was one likely place to look, the probable cause was not focused on a particular location within the vehicle, including the suitcase, and the taking of the suitcase to the station to obtain a warrant before the search (as suggested in the Sanders decision) would not have removed the exigency of mobility associated with the automobile."

> "Thus, we distinguish the Sanders case, in which the officers had probable cause only to search the suitcase and in which exigent circumstances no longer existed after the suitcase was taken into custody, from this case, in which exigent circumstances continued to exist whether or not the officers found marijuana in the suitcase. Furthermore, the officers in this case clearly had probable cause to search the entirety (including the luggage, the trunk, the glove compartment,

> and other areas) of the vehicle they had legally stopped, while the officers in the Sanders case arguably did not have probable cause to search a public taxi cab apparently unrelated to the defendant or to the tip from the confidential informer."

The State of Louisiana submits that the law enforcement authorities in this case, having probable cause to stop and search the defendants' vehicle, could lawfully search the unlocked suitcase. This Court certainly could not expect the officers to go obtain a search warrant for the suitcase, when the probable cause was focused not on the suitcase in particular, but on the vehicle, which was described in the informant's tip. It is felt that this court in Sanders, supra, did not intend to prohibit opening an unlocked suitcase during searches of vehicles and that the decision itself was limited to the factual situation involving probable cause focused on a particular suitcase, rather than a vehicle. It is submitted that the Carroll and Chambers doctrines as regards the search of a vehicle, and the contents

thereof, when police have probable cause to believe that contraband exists therein, remains intact, and these cases uphold the search in this instance.

CONCLUSION

For the reason that the decision of the Louisiana Supreme Court in this case is supported by the Carroll vs. United States, supra, and Chambers vs. Maroney, supra, cases, and does not, in fact, conflict with the cases cited by defendants, namely United States vs. Chadwick, supra, or Arkansas vs. Sanders, supra, the State of Louisiana respectfully submits that this Honorable Court should refuse to grant a Writ of Certiorari in this case and that the petition for Writ of Certiorari filed herein be dismissed.

Respectfully submitted,

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